

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

**UNITED STATES OF AMERICA**

**v.**

**Criminal No. 04-39**

**MAURICE ASKEW**

**ORDER OF COURT REGARDING DEFENDANT'S "MILLER" ELECTION**

On February 25, 2008, this Court filed a MILLER NOTICE AND ORDER (doc. no. 96), directing the defendant to file a Statement of Intent on or before April 30, 2008, pursuant to United States v. Miller, 197 F.3d 644 (3d Cir. 1999) In relevant part, the MILLER NOTICE AND ORDER stated as follows:

You have filed a Motion to Vacate Sentence Under 28 U.S.C. § 2255 (doc. no. [95]). You are hereby notified that federal law requires that you include all of your federal constitutional claims challenging a specific conviction and sentence in one petition seeking habeas corpus relief pursuant to 28 U.S.C. § 2255.

\* \* \*

. . . [I]f this Court considers and denies your petition as filed and the claims you raise in this petition on the merits, you will not be able to file a second or subsequent petition at a later time challenging the same conviction on other grounds, absent exceptional circumstances and the issuance of a certificate of appealability by the United States Court of Appeals for the Third Circuit.

Because your motion is explicitly captioned a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (doc. no. 95), Option 2 does not apply. Therefore, you are hereby directed to consider this Miller Notice, and to make an election between Option 1 (to have your motion ruled upon as filed) or Option 3 (withdraw your motion, in which case you may file one all-inclusive section 2255 petition within the one-year statutory period under the Antiterrorism Effective Death Penalty Act (AEDPA), 28 U.S.C. § 2244).

Accordingly,

**AND NOW, this 25<sup>th</sup> day of February, 2008, it is HEREBY ORDERED** that petitioner Maurice Askew shall file his “Statement of Intent” on or before **April 30, 2008**, setting forth his intention to either have his Motion to Vacate Sentence Under 28 U.S.C. § 2255 ruled upon as filed (and lose his ability to file a second or successive petitions absent certification by the court of appeals), or withdraw his motion, in which case he may file one all-inclusive § 2255 petition subject, however, to the one-year from final judgment statutory period prescribed by AEDPA for section 2255 petitions.

If petitioner exercises Option 3, the time for filing his “one all-inclusive § 2255 petition” will be tolled an additional 120 days from the date he files such Statement of Intent. United States v. Miller, 197 F.3d at 653. This Court does not read Miller, however, as reviving any claims that already may have been extinguished as untimely or as foreclosing the Government’s right to challenge any additional claims raised therein as untimely.

In the event petitioner does not file his Statement of Intent on or before **April 30, 2008**, this Court will proceed to determination of his motion as a section 2255 motion, with the attendant consequences under AEDPA. United States v. Miller, 197 F.3d at 652, n.7.

MILLER NOTICE AND ORDER, (doc. no. 96) at 1-3.

Defendant mailed an “Informal Brief Statement of Intent In Re: “Miller Notice and Order” by letter stamped by the United States Penitentiary at Lewisburg, Pennsylvania on April 30, 2008, and postmarked by the United States Postal Service on May 1, 2008. Defendant’s “Informal Brief Statement of Intent In Re: “Miller Notice and Order” has now been docketed at document no. 97, and the Court deems it timely.

The “Informal Brief Statement of Intent In Re: “Miller Notice and Order” indicates that defendant exercises Option 3, and “moves this Court to withdraw petitioner’s Section 2255 Motion on the grounds that he intends to file ‘one inclusive’ Section 2255 petition” raising an additional issue. Having exercised Option 3, the Court will **GRANT**

defendant's Motion to Withdraw (with doc. no. 97) his Motion to Vacate Sentence Under 28 U.S.C. § 2255 (doc. no. 95), and will **DISMISS** said Motion to Vacate Sentence Under 28 U.S.C. § 2255 (doc. no. 95) **without prejudice** to his filing one all-inclusive Motion to Vacate Sentence Under 28 U.S.C. § 2255 on or before **August 30, 2008**.

**IT IS SO ORDERED this 14th day of May, 2008**

s/ Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

cc:

Maurice Askew, Petitioner  
Inmate Number 07973-068  
United States penitentiary  
P.O. Box 1000  
Lewisburg, Pa 17837

all counsel of record